IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 148 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KETAV AUTO SERVICES

Versus

ADDITIONAL COLLECTOR & FOOD & CIVIL SUPPLY CONTROLLER

Appearance:

MR KR RAVAL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. Rule. Mr.M.A.Bukhari, learned Assistant Government Pleader appears and waives service of rule on behalf of the respondents. In the facts and

circumstances of the case, the matter is taken up for final hearing today.

2. This petition is filed against the order passed by the Additional Collector, Food and Civil Supply Controller, Ahmedabad on November 6, 1996 and by the State Government on June 25, 1998 confiscating an amount of Rs.20,000/- of the petitioner.

3. The petitioner was running a petrol pump in the name and style of M/s Ketav Auto Services, Near Polytechnic, Ambawadi, Ahmedabad. It was the case of the authority that on May 28, 1996, an officer of the Civil Supply Department, Gandhinagar inspected the petrol pump of the petitioner and certain irregularities were noticed. It was inter alia alleged that, after giving due credit of shortage permissible under the relevant rules, additional shortage of 474 liters petrol was found. For the period between March and April 1996, on scrutiny of stock register of the petitioner, excess shortage was found to the extent of 1831 liters and 1438 liters petrol. It was, therefore, alleged that the petitioner was not keeping true and correct accounts. Stock of about 2000 liters worth Rs.39,500/- was, hence, seized by the State Government.

4. On August 5, 1996, a notice was issued to the petitioner asking him to show cause as to why appropriate proceedings should not be taken against him and seized goods should not be confiscated. The petitioner submitted his reply inter alia explaining that there were some defects in his petrol pump and he got it repaired. In support of the said contention, necessary documents were also produced alongwith the reply. It may be stated here that, notice is of August 5, 1996, reply is of September 9, 1996. All the documents relating to defects in petrol pump were for the period prior to issuance of show cause notice which were of February 27, 1996, March 16, 1996, April 9, 1996 and May 26, 1996 respectively. It was a case of the petitioner that, even though, all those documents which were prior to issuance of show cause notice and were also sent alongwith the reply, they were not considered at all by the first respondent nor by the second respondent and amount of Rs.20,000/- was ordered to be confiscated which was clearly illegal and contrary to law.

5. At the time of hearing of the petition, the above contention has been reiterated by Mr.Raval, learned counsel for the petitioner. He also submitted that the petitioner is totally innocent and he has not committed

any illegality and/or irregularity. He also submitted that, had it been so, the petitioner would not have maintained books of account. Mr.Raval, submitted that this is a fit case in which both the orders are required to be quashed and set aside by giving the petitioner a clean chit. He also submitted that, though certain materials were taken into account by the first respondent for deciding the matter against the petitioner, copies thereof were not supplied. In this connection, reliance was placed on the inspection report submitted by the Director on July 5, 1996 which was referred to in the order passed by the first respondent. It was also submitted that, though notice was issued on June 7, 1996, it was referred to in the order as notice dated August 5, 1996.

6. Now, so far as notice is concerned, apart from the fact that, no such contention was raised either before the first authority or before the appellate authority, original notice is not produced by the petitioner, even in this court. Mr.Raval, at this stage prayed for time to produce the original notice which I have not granted. But, even otherwise, in my opinion, the contention is not well founded, the reason being that in the reply to the notice which is submitted by the petitioner, notice was referred to be of August 5, 1996 and not June 7, 1996. Thus, it appears that, though notice might have been prepared in the office of the first respondent on June 7, 1996, it was actually sent to the petitioner on August 5, 1996. Had it not been so, the petitioner would not have referred the said notice as of August 5, 1996 in his reply dated September 9, 1996. In any case, notice was issued which was replied and hence there is no question of any prejudice to the petitioner.

7. But, Mr.Raval, learned counsel for the petitioner is right when he submits that, relevant documents which have been produced and sent alongwith the reply to the notice were not considered by the authorities. If, they had been considered, obviously, authorities would have exercised an appropriate discretion in favour of the petitioner as it is clear from those documents that there were defects in the petrol pump and it was repaired.

8. Now, in the light of the decisions of this court in the case of M/s Govind Karsan & Co. Vs. State, (1983) 24 (1) GLR 145, as also Patel Ambaram Kuberbhai Vs. State of Gujarat & others., 1998 (2) GLH, 533, in my opinion, ends of justice would be met if instead of Rs.20,000/-, Rs.10,000/- is ordered to be confiscated to

the State Government.

9. At the time of hearing of the petition, learned Single Judge has directed the petitioner to deposit Rs.10,000/- towards the amount of stock seized. Learned counsel for the petitioner states that, the said amount is already deposited. If, the said amount is deposited, obviously, nothing more requires to be paid by him now. If, the said amount is not deposited, the petitioner will pay Rs.10,000/-.

10. Accordingly, the petition is partly allowed and rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, no order as to costs.

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(pathan)